

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>		X
THE NEW YORK TIMES COMPANY	:	
and MARK WALKER,	:	
	:	
Plaintiffs,	:	
	:	<u>COMPLAINT</u>
v.	:	
DEPARTMENT OF DEFENSE,	:	
	:	
Defendant.	:	
<hr/>		X

Plaintiffs THE NEW YORK TIMES COMPANY and MARK WALKER (jointly, “The Times”), by and through their undersigned attorneys, alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to obtain an order for the production of an agency record from the Department of Defense (“DOD”) in response to a request properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The Times is headquartered in this judicial district at 620 Eighth Avenue, New York, NY 10018.

3. Plaintiff Mark Walker is a reporter employed by The New York Times Company.

4. Defendant DOD is the agency within the federal government that has possession and control of the record that The Times seeks.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on The Times's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A).

8. Defendant DOD has failed to meet the statutory deadlines set by FOIA. *See* 5 U.S.C. §§ 552(a)(6)(A)–(B). Plaintiffs are therefore deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

9. On December 19, 2022, The Times submitted a FOIA request (the “Request”) to the DOD, seeking a copy of the DOD’s after-action report on the war in Afghanistan and the withdrawal from Kabul.

10. On December 20, 2022, the DOD acknowledged receipt of the Request and assigned the Request the number: 23-F-0296.

11. On December 22, 2022, the DOD sent an interim response stating that it would be unable to respond within FOIA’s 20-day statutory time period due to unusual circumstances. The DOD’s interim response did not provide an estimated date of its final determination.

12. The Times has received no further response to the Request.

CAUSE OF ACTION

13. The Times repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

14. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

15. Defendant has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. §§ 552(a)(6)(A)–(B). Accordingly, The Times is deemed to have exhausted its administrative remedies under FOIA.

16. Defendant is permitted to withhold documents or parts of documents only if one of FOIA’s enumerated exemptions apply.

17. No exemptions permit the withholding of the document sought by the Request.

18. Accordingly, Plaintiffs are entitled to an order compelling Defendant to produce the record responsive to the Request.

WHEREFORE, Plaintiffs respectfully request that this Court:

19. Declare that the document sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

20. Order Defendant to undertake an adequate search for the requested record and provide the record to Plaintiffs within 20 business days of the Court’s order;

21. Award Plaintiffs the costs of this proceeding, including reasonable attorneys’ fees, as expressly permitted by FOIA; and

22. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY
January 23, 2023

/s/ David E. McCraw

David E. McCraw
Legal Department
The New York Times Company
620 8th Avenue
New York, NY 10018
Phone: (212) 556-4031
E-mail: mccraw@nytimes.com

Counsel for Plaintiffs